

TRADEMARK ASSIGNMENT COVER SHEET

Electronic Version v1.1
Stylesheet Version v1.2

ETAS ID: TM302980

SUBMISSION TYPE:	NEW ASSIGNMENT		
NATURE OF CONVEYANCE:	ASSIGNS THE ENTIRE INTEREST AND THE GOODWILL		
CONVEYING PARTY DATA			
Name	Formerly	Execution Date	Entity Type
Lister Petter UK Limited		03/12/2004	Limited Company: UNITED KINGDOM
RECEIVING PARTY DATA			
Name:	Etchco 1213 Limited		
Street Address:	39 Newhall Street		
City:	Birmingham		
State/Country:	UNITED KINGDOM		
Postal Code:	B3 3DY		
Entity Type:	Limited Company: UNITED KINGDOM		
PROPERTY NUMBERS Total: 2			
Property Type	Number	Word Mark	
Registration Number:	1582242	LISTER PETTER	
Registration Number:	1946231	LISTER PETTER	
CORRESPONDENCE DATA			
Fax Number:	8028627512		
<i>Correspondence will be sent to the e-mail address first; if that is unsuccessful, it will be sent via US Mail.</i>			
Phone:	802-863-2375		
Email:	tmip@drm.com		
Correspondent Name:	Cathleen E. Stadecker, Esq.		
Address Line 1:	199 Main Street		
Address Line 4:	Burlington, VERMONT 05401		
ATTORNEY DOCKET NUMBER:	09689-043USG1		
NAME OF SUBMITTER:	Cathleen E. Stadecker		
SIGNATURE:	/Cathleen E. Stadecker/		
DATE SIGNED:	04/29/2014		
Total Attachments: 36			
source=ListerPetterUKLimitedtoEtchco_2004AssetsPurchaseAgreement#page1.tif			
source=ListerPetterUKLimitedtoEtchco_2004AssetsPurchaseAgreement#page2.tif			
source=ListerPetterUKLimitedtoEtchco_2004AssetsPurchaseAgreement#page3.tif			
source=ListerPetterUKLimitedtoEtchco_2004AssetsPurchaseAgreement#page4.tif			

OP \$65.00 1582242

TRADEMARK

source=ListerPetterUKLimitedtoEtchco_2004AssetsPurchaseAgreement#page5.tif
source=ListerPetterUKLimitedtoEtchco_2004AssetsPurchaseAgreement#page6.tif
source=ListerPetterUKLimitedtoEtchco_2004AssetsPurchaseAgreement#page7.tif
source=ListerPetterUKLimitedtoEtchco_2004AssetsPurchaseAgreement#page8.tif
source=ListerPetterUKLimitedtoEtchco_2004AssetsPurchaseAgreement#page9.tif
source=ListerPetterUKLimitedtoEtchco_2004AssetsPurchaseAgreement#page10.tif
source=ListerPetterUKLimitedtoEtchco_2004AssetsPurchaseAgreement#page11.tif
source=ListerPetterUKLimitedtoEtchco_2004AssetsPurchaseAgreement#page12.tif
source=ListerPetterUKLimitedtoEtchco_2004AssetsPurchaseAgreement#page13.tif
source=ListerPetterUKLimitedtoEtchco_2004AssetsPurchaseAgreement#page14.tif
source=ListerPetterUKLimitedtoEtchco_2004AssetsPurchaseAgreement#page15.tif
source=ListerPetterUKLimitedtoEtchco_2004AssetsPurchaseAgreement#page16.tif
source=ListerPetterUKLimitedtoEtchco_2004AssetsPurchaseAgreement#page17.tif
source=ListerPetterUKLimitedtoEtchco_2004AssetsPurchaseAgreement#page18.tif
source=ListerPetterUKLimitedtoEtchco_2004AssetsPurchaseAgreement#page19.tif
source=ListerPetterUKLimitedtoEtchco_2004AssetsPurchaseAgreement#page20.tif
source=ListerPetterUKLimitedtoEtchco_2004AssetsPurchaseAgreement#page21.tif
source=ListerPetterUKLimitedtoEtchco_2004AssetsPurchaseAgreement#page22.tif
source=ListerPetterUKLimitedtoEtchco_2004AssetsPurchaseAgreement#page23.tif
source=ListerPetterUKLimitedtoEtchco_2004AssetsPurchaseAgreement#page24.tif
source=ListerPetterUKLimitedtoEtchco_2004AssetsPurchaseAgreement#page25.tif
source=ListerPetterUKLimitedtoEtchco_2004AssetsPurchaseAgreement#page26.tif
source=ListerPetterUKLimitedtoEtchco_2004AssetsPurchaseAgreement#page27.tif
source=ListerPetterUKLimitedtoEtchco_2004AssetsPurchaseAgreement#page28.tif
source=ListerPetterUKLimitedtoEtchco_2004AssetsPurchaseAgreement#page29.tif
source=ListerPetterUKLimitedtoEtchco_2004AssetsPurchaseAgreement#page30.tif
source=ListerPetterUKLimitedtoEtchco_2004AssetsPurchaseAgreement#page31.tif
source=ListerPetterUKLimitedtoEtchco_2004AssetsPurchaseAgreement#page32.tif
source=ListerPetterUKLimitedtoEtchco_2004AssetsPurchaseAgreement#page33.tif
source=ListerPetterUKLimitedtoEtchco_2004AssetsPurchaseAgreement#page34.tif
source=ListerPetterUKLimitedtoEtchco_2004AssetsPurchaseAgreement#page35.tif
source=ListerPetterUKLimitedtoEtchco_2004AssetsPurchaseAgreement#page36.tif

DATED: 17 March 2004

**LISTER PETTER UK LIMITED
(IN ADMINISTRATION)**

AND

**LEE ANTONY MANNING
ANDREW JOHN PEPPER**

AND

ETCHCO 1213 LIMITED

**AGREEMENT FOR THE SALE AND PURCHASE
OF CERTAIN OF THE NON X-SERIES BUSINESS AND
ASSETS OF LISTER PETTER UK LIMITED**

CONTENTS

Clause	Page
1. Interpretation	5
2. Sale And Purchase	14
3. Purchase Price	15
4. Completion	18
5. Contracts	19
6. Debts	20
7. Records	21
8. Third Party Equipment And Retention Of Title Assets	21
9. Vat	22
10. Employees	24
11. Liabilities And Apportionments	26
12. Exclusions And Acknowledgements	27
13. No Personal Liability Of Administrators	28
14. Buyer's Warranties	29
15. Costs	30
16. Further Assurance	30
17. General	31
18. Entire Agreement	32
19. Announcements	32
20. Notices	33
21. Governing Law And Jurisdiction	33
22. Counterparts	33
SCHEDULE 1 EMPLOYEES	34
SCHEDULE 2 EXCLUDED EMPLOYEES	35
SCHEDULE 3 EXCLUDED CONTRACTS	36
SCHEDULE 4 KNOWN ROT CLAIMS	37
SCHEDULE 5 X-FIXED EQUIPMENT AND MACHINERY AND TECH CENTRE EQUIPMENT	38
SCHEDULE 6 TRADE MARKS	39

THIS AGREEMENT is made on 12 March 2004

BETWEEN:

- (1) **LISTER PETTER UK LIMITED** (in Administration) (registered no. 4374952) (the "Seller"), acting by its joint administrators, as agents and without personal liability, Lee Antony Manning and Andrew John Pepper, both insolvency practitioners of, respectively, Deloitte & Touche, 180 Strand, London WC2R 1BL and Kroll, 10 Fleet Place, London EC4M 7RB (the "Administrators");
- (2) **THE ADMINISTRATORS**; and
- (3) **ETCHCO 1213 LIMITED**, a company incorporated in England and Wales (registered no. 4896960) whose registered office is at 39 Newhall Street, Birmingham B3 3DY (the "Buyer").

WHEREAS:

- (A) An administration order was made in respect of the Seller on 13 June 2003 and the Administrators were appointed joint administrators of the Seller.
- (B) The Seller has agreed to sell whatever right, title and interest (if any) the Seller may have in the Business and Assets (as defined below) to the Buyer on the terms set out in this Agreement and the Buyer is willing to buy the Business and Assets on that basis.
- (C) The Buyer is entering into this Agreement, having made such inspection and investigation of the Assets as it thinks fit, on the basis of a purchase by the Buyer of the Assets "as is" and in full knowledge and acceptance of the terms and conditions of this Agreement, in particular (but without limitation) of the fact that the price to be paid for the same hereunder has been calculated on the acknowledged basis that no assurances, warranties or representations as to the Seller's right, title or interest in any of the Assets are given and that, accordingly, the risk of good title or any title to all or any of the Assets not passing hereunder to the Buyer is the Buyer's and that, since it is contracting with a company in administration, the terms and conditions of this Agreement are reasonable.
- (D) The sale of the Assets to the Buyer is being conducted in parallel with a sale to Deutz Engines Limited ("Deutz") of such right, title and interest (if any) as the Seller shall have at Completion in certain assets, property and rights relating to the design, development, production, manufacture, assembly, purchase, marketing and sale of the X-Engines (as hereinafter defined).
- (E) The Buyer acknowledges that a degree of interdependence exists between the assets, property and rights which the Seller purports to transfer to the Buyer hereunder and the assets, property and rights which the Seller purports to transfer to Deutz. In particular, certain parts, technology and information are used by the Seller in the design,

development, production, manufacture, assembly, purchase, marketing and sale of both the X-Engine and one or more of its older engine ranges.

- (F) The Buyer acknowledges that a level of co-operation between the Buyer and Deutz is necessary in order to avoid frustrating its business aims and those of Deutz and, to this end, have or will enter into a management services agreement with Deutz to provide a framework for such co-operation.
- (G) Accordingly, the Buyer acknowledges that such right title and interest as the Buyer shall acquire in the Assets shall be subject to a non-exclusive, unrestricted, perpetual, irrevocable, transferable, worldwide licence (with the right to grant sub-licences) granted by the Seller to Deutz immediately before execution of this Agreement, over such right, title and interest as the Seller shall have in the Common Parts Information and the Common Parts Technology (each as defined herein).
- (H) The Buyer acknowledges that the purpose of such licence is to enable (to the extent that such right, title and interest (if any) as is transferred by the Seller to the Buyer and Deutz allows) Deutz to produce, have produced, manufacture, have manufactured, offer, sell or otherwise deal in any manner with the X-Engine and, such purpose being consistent with the principles outlined in the management services agreement, the Buyer will respect the terms of such licence.

THE PARTIES AGREE as follows:

1. **INTERPRETATION**

- 1.1 In this Agreement, unless the context otherwise requires, the words and expressions set out below shall have the meanings respectively given to them:-

"Administration Records" means the records, papers and correspondence which, in the Administrators' reasonable judgment, relate in whole or in part to the administration of the Seller;

"Assembly Lease" means the lease dated 30 November 2000 between the SWRDA and Stroud Valley Engineering Limited (formerly known as Lister Petter Limited) over the assembly building located at Long Street, Dursley, Gloucestershire;

"Assembly Property" means the property the subject of the Assembly Lease;

"Assembly Property Interest" means whatever right, title and interest (if any) the Seller and Stroud Valley Engineering Limited may have in the Assembly Property;

"Assembly Surrender Agreement" means the agreement of even date in the agreed form between the Seller (1) Stroud Valley Engineering Limited (2) and the South West of England Regional Development Agency ("SWRDA") (3), pursuant to which the Seller and Stroud Valley Engineering Limited agree to surrender the Assembly Property Interest in accordance with the terms of that agreement;

"**Assets**" means all the property and assets agreed to be sold by the Seller and purchased by the Buyer under this Agreement (each an "Asset");

"**Bank Base Rate**" means the base rate set by The Royal Bank of Scotland plc from time to time;

"**Business Day**" means a day other than a Saturday or Sunday or public holiday in England and Wales on which clearing banks in the City of London are open to the public for the transaction of business;

"**Buyer Debenture**" means the debenture to be entered into by the Buyer at Completion, as security for the payment of the Secured Obligations (as such term is defined therein) in the agreed form;

"**Business**" means the going concern business operated by the Seller at Completion as the designers, developers, manufacturers, assemblers and sellers of diesel engines other than the X-Engine.

"**Comfort Letter**" means a letter of even date in the agreed form from the Administrator to each of Stroud Valley Engineering Limited, the Buyer and Deutz UK Limited pursuant to which the Administrators provide assurances in relation to the payment of amounts due to the SWRDA in connection with, amongst other things, the Assembly Surrender Agreement;

"**Common Parts**" mean the parts and components of the X-Engine which are used identically in one or more of the Other Engines at Completion including, but not limited to:

- (i) rocker levers of all X-Engines;
- (ii) connecting rods of the X86 type X-Engines;
- (iii) flywheel housings SAE 4 and 5 of all X-Engines;
- (iv) angle adaptors of all X-Engines;
- (v) oil pumps of all X-Engines; and
- (vi) fuel lift pumps of all X-Engines.

"**Common Parts Information**" means all technical information and data, drawings, parts lists, specifications, calculations and/or other embodied know-how (stored electronically or otherwise), customer names and lists, supplier names and lists, sales information, marketing records and any advertising or other promotional materials of the Seller which relate to the design, development, production, manufacture, assembly, purchase, marketing and sale of the Common Parts at Completion, and which do not fall within the definition of Company Records or Administrators' Records;

"**Common Parts Technology**" means all technology (including all copyright, database rights, design rights and rights in know how and inventions and all rights under

licences, consents, orders, statutes or otherwise in relation thereto) which relate to the Common Parts, including models, patterns, fixtures, test set-ups and prototypes, owned by the Seller at Completion;

"Company Records" means the statutory books of the Seller; all accounting records of the Seller which the Seller is under a duty to keep pursuant to Chapter I of Part VII of the Companies Act 1985; and all accounting and other records, files, information and documents which, as a matter of law, the Administrators and/or a liquidator of the Seller and/or HM Customs & Excise may be entitled to have, or to have access to, from time to time;

"Completion" means completion of the sale and purchase of the Assets in accordance with Clause 4 of this Agreement;

"Completion Monies" has the meaning ascribed to that term in Clause 3.2;

"Contracts" means all the contracts (excluding the Excluded Contracts) to which the Seller is party and which are unperformed (wholly or partly) at Completion, whether entered into by or on behalf of the Seller before or after the appointment of the Administrators and whether or not the Administrators are personally liable on or under those contracts including, for the avoidance of doubt, the Third Party Equipment Contracts, the Distribution Contracts, and the Purchase Orders (but not, for these purposes, any contracts relating to the Property Interest or the Employees, which are dealt with separately);

"Debts" means all debts, obligations, forms of indebtedness or other sums (including any amount in respect of VAT) due or payable or to become due or payable to or incurred in favour of the Seller and/or the Administrators (whether or not invoiced) on, before or after Completion, including (without limitation) all book debts (including those assigned to Fortis Bank pursuant to a confidential invoice discounting facility), all moneys at bank, all rights of set-off and counterclaims, all insurance recoveries (other than Insurance Recoveries), tax refunds and, for the avoidance of doubt, all amounts referred to in the definition of Pre-Invoice Amounts (but not any debts arising in the period post Completion as a result of the Buyer's completion of work in progress which, at the date of Completion, falls within the definition of Stock);

"Domain Names" means Lister-Petter.co.uk, Lister-Petter.com; gensets2000.co.uk and diesengineparts.co.uk;

"Distribution Contracts" means the distribution agreements or arrangements (whether written or verbal) existing at Completion between the Company and each of (i) Lister Petter Americas, Inc. and (ii) Lister Petter France SA;

"Employees" means all employees of the Seller (including, without limitation, those whose details are set out in Schedule 1) other than the Excluded Employees,;

"Excluded Assets" means all property and assets (wherever located) which may be owned or previously have been owned by the Seller but which are not expressly listed in Clause 2.1 including, without limitation to the foregoing, the following:

- (a) all property, assets and interests of any nature which are situated outside the United Kingdom;
- (b) all cash in hand and at bank, whatever its origins and wherever situate;
- (c) all Debts;
- (d) all Third Party Assets;
- (e) all Intellectual Property other than the Intellectual Property Rights;
- (f) all Administration Records;
- (g) all Company Records;
- (h) all shareholdings held by the Seller; and
- (i) all interests of the Seller in any pension schemes.

"Excluded Contracts" means all contracts which (i) relate exclusively to the design, development, production, manufacture, purchase, marketing and sale of the X-Engine and/ or (ii) are listed at Schedule 3;

"Excluded Employees" those employees of the Seller listed in Schedule 2;

"Fixed Plant and Machinery" means the fixed plant, loose plant, tooling (wheresoever situated), equipment, other similar articles and machinery (other than any fixtures and fittings which belong to any landlord) and leasehold improvements which are owned by the Seller and do not fall within the definition of X-Assets;

"Goodwill" the goodwill of the Business, and the right to carry on the Business, to represent oneself as operating the Business in succession to and/or to the exclusion of the Seller, and to use the name or trading style of the Seller in connection with the Business (insofar as the Seller is able to transfer the same) including for these purposes the name Lister Petter or any derivations thereof but excluding the name X-Series and any derivations thereof;

"Heads of Agreement" means a letter of agreement between the Buyer, Etchco 1218 Limited and the Seller dated 4 February 2004;

"Information" means the Common Parts Information, all technical information and data, drawings, parts lists, specifications, calculations and/or other embodied know-how (stored electronically or otherwise), customer names and lists, supplier names and lists, sales information, marketing records and any advertising or other promotional materials of the Seller which do not fall within the definitions of X-Assets, Company Records and/or Administrators' Records;

"Insolvency Act" means the Insolvency Act 1986 (as amended, replaced or substituted from time to time);

"Insurance Recoveries" means insurance recoveries due or payable (or to become due or payable) to the Seller relating to any losses suffered or incurred by the Seller arising out of the Fixed Plant and Machinery, but only to the extent to which the Seller has not already made a payment to any relevant third party in respect of such losses;

"Intellectual Property" means:

- (a) patents, domain names, trade marks, service marks, registered designs, applications and rights to apply for any of those rights, trade, business and company names, unregistered trade marks and service marks, copyrights, database rights, know-how, rights in designs and inventions and any approvals, consents or registrations granted by any regulatory authority or by law relating to the Assets;
- (b) rights under licences, consents, orders, statutes or otherwise in relation to a right in paragraph (a);
- (c) rights of the same or similar effect or nature as or to those in paragraphs (a) and (b) which now or in the future may subsist, including, but not limited to, any applications to register any such rights; and
- (d) the right to sue for infringements of any of the foregoing rights subsequent to Completion;

"Intellectual Property Rights" means all Intellectual Property (including, for the avoidance of doubt, the Domain Names, the Trade Marks and the Common Parts Technology) to the extent that such is owned by the Seller and does not fall within the definition of X-Assets at Completion;

"JMG Contract" means the contract between the Seller and JMG Limited for the supply by the Seller to JMG of certain engines;

"Known ROT Claims" means the claims listed in Schedule 4;

"Motor Vehicles" means the motor vehicles which are owned by the Seller and do not fall within the definition of X-Assets;

"Net Pre-Invoice Amount" has the meaning given to such term in Clause 3.5.2;

"Net Prepayment Amount" has the meaning given to such term in Clause 3.5.1;

"New Assembly Lease Agreement" means an agreement of even date between the Buyer and the SWRDA for a lease of the Assembly Property;

"Office Equipment" means the office equipment, furnishings and other similar articles which are owned by the Seller and do not fall within the definition of X-Assets;

"Other Engines" means all internal combustion engines for operation with diesel or gaseous fuels which are designed, developed, manufactured or assembled by the Company at Completion other than the X-Engine;

"Pre-Invoice Amount" means an amount equal to any sums invoiced by the Company to third parties on or before Completion in relation to the supply of Stock to such third parties, to the extent that such Stock has not been despatched by the Company to the relevant third party on or before Completion (but excluding any amounts set out in invoice number SIE/39051620 pursuant to the JMG Contract);

"Prepayment Amount" means an amount equal to any sums prepaid by the Company and/or the Administrators to any supplier of stock in the ordinary course of trading in the period prior to Completion to the extent that the stock in respect of which such prepayments have been made (i) has not been received by the Company on or before Completion and (ii) would have fallen within the definition of Stock had it been received by the Seller or before Completion;

"Priory Lease" means the lease dated 30 November 2000 between B Walker & Co Limited, Dursley and Lister Petter Group Limited over the office building located at The Priory, Long Street, Dursley, Gloucestershire;

"Priory Property" means the property the subject of the Priory Lease;

"Priory Property Interest" means whatever right, title and interest (if any) the Seller and Stroud Valley Engineering Limited may have in the Priory Property;

"Priory Licence Agreement" means the agreement of even date in the agreed form between Lister Petter Group Limited (1) and the Buyer (2), pursuant to which Lister Petter Group Limited agrees to licence the Priory Property Interest to the Buyer in accordance with the terms of that agreement;

"Purchase Orders" means orders for assets placed by the Seller with suppliers in the ordinary course of trading in the period prior to Completion, to the extent that the assets identified in such purchase orders (i) do not relate exclusively to the design, development, manufacture or assembly of the X-Engine and (ii) have not been received by the Seller before Completion;

"Release" means the release of the Assets from the security created by the Security Documents in the agreed form;

"Residual Assets" means all assets, property or rights of the Seller (other than the Excluded Assets) which do not fall within (i) the definition of X-Assets and/or (ii) sub paragraphs 2.1.1 to 2.1.9;

"Retention of Title Assets" means those tangible assets which are not owned by the Seller, but which have been supplied to it on credit terms under purchase orders placed by it or by the Administrators on its behalf at Completion and which, by reason of any

reservation of title, or similar right of the suppliers, are effective to prevent property passing to the Seller;

"**Salary Payment**" has the meaning given to such term in Clause 10.7;

"**Sale Deposit**" means the deposit paid by or on behalf of the Buyer into the account of the Seller's Solicitors pursuant to the Heads of Agreement;

"**Security Documents**" has the meaning given to such term in the Release;

"**Seller Assignee**" has the meaning given to such term in Clause 17.4;

"**Seller's Solicitors**" means Clifford Chance Limited Liability Partnership of 10 Upper Bank Street, London E14 5JJ (Ref: IFW/L2290/47/NF);

"**Stock**" means all stocks of raw materials, partly finished (including work in progress) and finished goods which are owned by the Seller at Completion and do not fall within the definition of X-Assets;

"**Stock Balancing Payment**" has the meaning given to it in Clause 3.6;

"**Tech Centre**" means the research and development building, located at Long Street, Dursley, Gloucestershire

"**Tech Centre Equipment**" means the facilities, machinery, equipment (including work benches, test cells and tools), office equipment (including CATIA servers, workstations, related software and furnishings) and other similar articles which, in each case, are owned by the Seller at Completion and:

- (i) listed in Schedule 5; and/or
- (ii) located within or at the Tech Centre at Completion; and/or
- (iii) used exclusively in connection with the design, development, production, manufacture, assembly, purchase, marketing or sale of the X-Engine at Completion;

"**Third Party Assets**" means the Third Party Equipment, the Retention of Title Assets and all other items in respect of which the Seller is not the owner at Completion;

"**Third Party Equipment**" means any items of plant, machinery, equipment and other similar articles which are not owned by the Seller at Completion including, but not limited to, items on lease or hire purchase or of which the Seller is for any reason bailee;

"**Third Party Equipment Contracts**" means those contracts set out in Schedule 7 between the Seller and third parties in respect of certain of the Third Party Equipment;

"**Third Party Stock**" means all stocks of raw materials, partly finished (including work in progress) and finished goods which fall within the definition of Third Party Assets;

"Total Purchase Price" has the meaning given to it in Clause 3.1;

"Trade Marks" means those trade marks listed in Schedule 6;

"VAT" means value added tax as imposed by the VATA and legislation supplemental thereto and any other tax (whether imposed in the United Kingdom in substitution thereof or in addition thereto or elsewhere) of a similar fiscal nature;

"VATA" means, in the United Kingdom, the Value Added Tax Act 1994 and, in a jurisdiction outside the United Kingdom, any equivalent legislation;

"WestLB" means Westdeutsche Landesbank Girozentrale, London Branch;

"X-Assets" means together the X-Technology, X-Information, X-Fixed Equipment and Machinery, X-Stock and Tech Centre Equipment (each an "X-Asset");

"X-Engines" means the internal combustion engines of the types designated 3X86, 4X86, 3X90, 4X90 and/or 4X90T by the Seller, or any variant or derivate of the aforesaid engines, for operation with diesel fuel or gaseous fuels and **"X-Engine"** shall be construed accordingly;

"X-Engine Assembly Area" means the roofed area and floorspace in the manufacturing and assembly plant of the Seller located at Long Street, Dursley, Gloucestershire which is dedicated to the assembly of the X-Engines and marked by barriers excluding, for the avoidance of doubt, the premises or facilities which are beyond such barriers, such as painting, storage, logistic and other facilities used in connection with the X-Engine;

"X-Engine Technology" means all technology (including all copyright, database rights, design rights and rights in know how and inventions and all rights under licences, consents, orders, statutes or otherwise in relation thereto, but excluding, for the avoidance of doubt, the name Lister Petter and any derivations thereof) which relates to the X-Engines, all parts, spare parts and components of the X-Engines and all applications of X-Engines for genset, vehicle or other uses, including models, patterns, fixtures, test set-ups and prototypes owned by the Seller at Completion, excluding, for the avoidance of doubt, the Common Parts Technology;

"X-Fixed Equipment and Machinery" means the fixed equipment (including the X-Engine assembly line and the X-Engine test cells), loose equipment (including tooling such as models, cores, fixtures, patterns, dies), other similar articles and machinery (other than any fixtures and fittings which belong to any landlord) and leasehold improvements which, in each case, are owned by the Seller at Completion and:

- (a) listed in Schedule 5; and/or
- (b) situated at the X-Series Assembly Area at Completion; and/ or
- (c) used exclusively in connection with the design, development, production, manufacture, purchase, marketing or sale of the X-Engine at Completion,

(excluding, for the avoidance of doubt, the Tech Centre Equipment and the X-Stock);

"X-Information" means all technical information and data, drawings, parts lists, specifications, calculations and/or other embodied know-how (stored electronically or otherwise), customer names and lists, copies of all invoice orders and contracts concerning supplies of X-Engine parts and components, supplier names and lists, sales information, marketing records and any advertising or other promotional materials of the Seller which relate to the design, development, production, manufacture, assembly, purchase, marketing and sale of the X-Engine at Completion, and which do not fall within the definition of Company Records, Administrators' Records or Common Parts Information;

"X-Stock" means all stocks of raw materials, partly finished (including work in progress) and finished goods which are used exclusively in the design, development, production, manufacture, assembly, purchase, marketing and sale of the X-Engine (other than Common Parts) and are owned by the Seller at Completion (excluding for the avoidance of doubt the Tech Centre Equipment and the Fixed Equipment and Machinery).

In this Agreement a reference to:

- 1.1.1 liability under, pursuant to or arising out of (or any analogous expression) any agreement, contract, deed or other instrument includes a reference to contingent liability under, pursuant to or arising out of (or any analogous expression) that Agreement, contract, deed or other instrument;
- 1.1.2 a document in the "agreed form" is a reference to a document in a form approved and for the purposes of identification initialled by or on behalf of each party;
- 1.1.3 a statutory provision includes a reference to the statutory provision as modified or re-enacted or both from time to time before the date of this Agreement and any subordinate legislation made under the statutory provision (as so modified or re-enacted) before the date of this Agreement;
- 1.1.4 a person includes a reference to any individual, firm, company, corporation or other body corporate, government, state or agency of a state or any joint venture, association or partnership (whether or not having a separate legal personality);
- 1.1.5 a person includes a reference to that person's legal personal representatives and successors;
- 1.1.6 the singular includes the plural and vice versa (unless the context otherwise requires);

- 1.1.7 a Clause, Paragraph, Schedule or Annex, unless the context otherwise requires, is a reference to a Clause or Paragraph of or Schedule or Annex to this Agreement;
- 1.1.8 references in this Agreement to any person shall be deemed, where appropriate and unless the context otherwise requires, at any time when that person is treated as a member of a group for the purposes of sections 43 to 43C of VATA, to include a reference to the representative member of such group; and
- 1.1.9 ~~any English legal term for any action, remedy, method of judicial proceeding,~~ legal document, legal status, court, official or any legal concept or thing shall in respect of any jurisdiction other than England be deemed to include what most nearly approximates in that jurisdiction to the English legal term, and any English statute shall be construed so as to include equivalent or analogous laws of any other jurisdiction.
- 1.2 The headings in this Agreement do not affect its interpretation.
- 2. SALE AND PURCHASE**
- 2.1 Subject to the Buyer (i) paying to the Administrators, on behalf of the Seller, the Completion Monies in accordance with Clause 3.2 and (ii) granting the Buyer Debenture in accordance with Clause 4.3, the Seller, acting by the Administrators, agrees to sell and the Buyer agrees to buy, with effect from Completion, such right, title and interest (if any) as the Seller may have at Completion in the following assets, upon the terms set out in this Agreement:
- 2.1.1 the benefit (subject to the burden) of the Contracts;
- 2.1.2 the Fixed Plant and Machinery;
- 2.1.3 the Office Equipment
- 2.1.4 the Motor Vehicles;
- 2.1.5 the Stock;
- 2.1.6 the Information;
- 2.1.7 the Goodwill;
- 2.1.8 the Intellectual Property Rights;
- 2.1.9 the Insurance Recoveries; and
- 2.1.10 the Residual Assets.
- 2.2 The Assembly Property Interest is the subject of the Assembly Surrender Agreement and the Priory Property Interest is the subject of the Priory Property Licence Agreement.

- 2.3 Nothing in this Agreement shall operate to transfer any assets or rights or liabilities or obligations of the Seller other than those specifically referred to in Clause 2.1. Without limiting the generality of the foregoing, and for the avoidance of all (if any) doubt, the Excluded Assets are expressly excluded and excepted from the sale of the Assets.
- 2.4 Risk in and such right, title and interest (if any) as the Seller may have in the Assets shall pass to the Buyer on Completion.
- 2.5 The Buyer will accept without requisition or objection or further investigation such ~~right, title and interest (if any) as the Seller has in the Assets.~~ The Assets shall be acquired by the Buyer (in the case of tangibles) in the state and condition and the situation in which any Asset is at the time of Completion.
- 2.6 For the avoidance of doubt, all the terms of this Agreement, including Clauses 12 and 13, apply to the Schedules and all representations, warranties and conditions, express or implied, and whether statutory or otherwise, are expressly excluded in relation to the contents of the Schedules.

3. PURCHASE PRICE

- 3.1 The purchase price to be paid by the Buyer for the Assets under this Agreement is, subject to Clauses 3.5 and 3.6, the sum of £2,500,000, apportioned in respect of the Assets as follows:
- 3.1.1 for the benefit (subject to the burden) of the Contracts, the sum of £1;
 - 3.1.2 for the Fixed Plant and Machinery, the sum of £250,000;
 - 3.1.3 for the Office Equipment, the sum of £1;
 - 3.1.4 for the Motor Vehicles, the sum of £1;
 - 3.1.5 for the Stock, the sum of £1,000,000;
 - 3.1.6 for the Information, the sum of £1;
 - 3.1.7 for the Goodwill, the sum of £1;
 - 3.1.8 for the Intellectual Property Rights, the sum of £1,249,993;
 - 3.1.9 for the Insurance Recoveries, the sum of £1;
 - 3.1.10 for the Residual Assets, the sum of £1.
- (together with the Net Prepayment Amount (if any) and the Stock Balancing Payment, the "**Total Purchase Price**").
- 3.2 At Completion, the Buyer shall pay to the Seller on account of the Total Purchase Price payable under Clause 3.1, the sum of £500,000 less £125,000 on account of the Sale Deposit, making a total of £375,000 (the "**Completion Monies**").

- 3.3 The Completion Monies shall be payable in full on Completion without any set-off counterclaim, retention or deduction, and shall be made by way of transfer of cleared funds to the Seller's Solicitors' bank account, details of which are set out below:

HSBC Bank plc
Poultry and Princes Street
PO Box 648
London EC2R 8AJ

Client A/C No: 23181499

Sort Code: 40-05-30

Swift Address: MIDLGB22

Ref: IFW/L2290/47/NF.

- 3.4 Subject to Clauses 3.5 and 3.6, in respect of the difference between the Total Purchase Price and the sum of the Completion Monies and the Sale Deposit (the "Deferred Purchase Price"), being £2,000,000, the Buyer shall make the following payments on the following dates (in each case by no later than 12 noon):

- 3.4.1 the sum of £250,000 by no later than 14 April 2004;
- 3.4.2 the sum of £250,000 by no later than 30 June 2004;
- 3.4.3 the sum of £250,000 by no later than 30 September 2004;
- 3.4.4 the sum of £250,000 by no later than 31 December 2004;
- 3.4.5 the sum of £250,000 by no later than 31 March 2005;
- 3.4.6 the sum of £250,000 by no later than 30 June 2005;
- 3.4.7 the sum of £250,000 by no later than 30 September 2005; and
- 3.4.8 the sum of £250,000 by no later than 31 December 2005.

- 3.5 On or as soon as is reasonably practicable following Completion (and in any event within 5 Business Days of Completion), the Administrators shall, in good faith, having first consulted with the Buyer, calculate the Prepayment Amount and the Pre-Invoice Amount. If:

- 3.5.1 the Prepayment Amount shall exceed the Pre-Invoice Amount, an amount equal to the difference (the "Net Prepayment Amount") shall be payable by the Buyer to the Seller within 30 days of Completion in addition to any amount payable by the Buyer under Clause 3.4; or
- 3.5.2 the Pre-Invoice Amount shall exceed the Prepayment Amount, the Deferred Consideration payable by the Buyer on 14 April 2004 (and, if such excess shall exceed £250,000, such later scheduled payment dates as are necessary to

equal such excess) shall be reduced by an amount equal to the difference (the "Net Pre-Invoice Amount"),

Any Net Prepayment Amount payable by the Buyer to the Seller under Clause 3.5.1 shall be reduced by an amount equal to the Salary Payment payable by the Buyer to the Seller under Clause 10.7.

3.6 On or as soon as is reasonably practicable following Completion (and in any event within 5 Business Days of Completion), the Administrators shall, in good faith and in consultation with the Buyer, calculate the net book value of the Stock by reference to the Seller's books and records. If the net book value of the Stock thereby calculated is:

3.6.1 less than £5,600,000, the Deferred Consideration payable by the Buyer to the Seller shall be reduced by an amount equal to 30% of the difference between the actual valuation and £5,600,000, such amount to be deducted pro rata from the payments described at Clauses 3.4.1 to 3.4.8;

3.6.2 more than £5,900,000, the Deferred Consideration payable by the Buyer to the Seller shall be increased by an amount equal to 30% of the difference between the actual valuation and £5,900,000, such amount to be paid pro rata against the payments described at Clauses 3.4.1 to 3.4.8;

3.6.3 in the range of £5,600,000 to £5,900,000 (inclusive) no payment will be due to or from either the Buyer or the Seller,

(such amounts hereinafter referred to as the "Stock Balancing Payment").

3.7 Any monies due and payable by the Buyer on account of the Deferred Purchase Price the Net Prepayment Amount and the Stock Balancing Payment shall be paid by the Buyer to the Seller by way of transfer of cleared funds to the Seller's Solicitors' bank account, details of which are set out in Clause 3.3, or to such other account as the Seller or a Seller Assignee may specify from time to time. All amounts due in respect of the Deferred Purchase Price the Net Prepayment Amount and the Stock Balancing Payment (and all other sums due under this Agreement) shall (subject to the last sentence of Clauses 3.5 and 10.7) be payable in full on the due dates without any set-off, counterclaim, retention or deduction, any right to which is expressly waived by the Buyer).

3.8 If any sum due for payment by any party under this Agreement is not paid on the due date, that party shall pay interest on that sum from the due date until the date of actual payment calculated on a day to day basis at a rate equal to the aggregate of four per cent per annum over the Bank Base Rate for the time being. The Buyer's obligation to the Total Purchase Price shall, for the avoidance of doubt, be a secured obligation (as such term is defined in the Buyer Debenture).

4. COMPLETION

4.1 Completion shall take place at the office of the Seller's Solicitors immediately after the execution of this Agreement by the parties hereto. Completion of the Priory Property Licence Agreement in accordance with its terms shall take place immediately after Completion of this Agreement.

4.2 At Completion the Seller shall:

4.2.1 complete the Assembly Surrender Agreement;

4.2.2 execute the Comfort Letter;

4.2.3 allow, to the extent that the Seller is able, the Buyer to take possession of the Assets wherever they are situate and shall be deemed to have made delivery of all those Assets title to which is capable of passing by delivery; and

4.2.4 deliver to the Buyer:

(a) the Release, duly executed by or on behalf of WestLB; and

(b) the Assembly Surrender Agreement, duly executed by or on behalf of Stroud Valley Engineering Limited and the SWRDA; and

(c) the Priory Property Licence Agreement, duly executed by or on behalf of Lister Petter Group Limited,

which the Buyer will accept as constituting transfer and delivery of the Assets and performance of all of the Seller's obligations under this Agreement as regards Completion.

4.3 At Completion the Buyer shall:

4.3.1 complete the New Assembly Lease;

4.3.2 make payment of the Completion Monies in accordance with Clause 3.2;

4.3.3 deliver to the Seller the Buyer Debenture, duly executed for and on behalf of the Buyer;

4.3.4 deliver to the Buyer a copy of the VAT1 form pursuant to which it has applied to be registered for VAT showing an effective date of registration which pre-dates Completion; and

4.3.5 assume responsibility for all liabilities, obligations, costs and expenses to the extent that they relate to or arise in connection with the operation of the Business or the use of the Assets at any time after Completion.

4.4 As from Completion the Buyer shall indemnify the Seller and/or the Administrators and each of them in full in connection with any such liabilities, obligations, costs and expenses as are referred to in Clause 4.3.5.

4.5 If the Buyer wishes or needs to remove any of the Assets after Completion then it will bear the entire cost and expense of such removal and make good (at its own cost and expense) any damage caused in the process.

5. **CONTRACTS**

5.1 Subject to Clause 5.2, after Completion the Buyer shall:

5.1.1 to the extent that they fail to be performed after Completion, perform all the Administrators' obligations and the Seller's obligations under each Contract in accordance with the terms of the Contract; and

5.1.2 indemnify the Administrators and the Seller and each of them against each loss, liability and cost, which the Administrators and/or the Seller may incur as a result of the Buyer's performance or non-performance of the Administrators' obligations and/or the Seller's obligations under each Contract which fail to be performed after Completion to the extent that the loss, liability or cost is attributable to the Buyer's act or omission after Completion (including, without limitation and provided that the Buyer shall be given every opportunity to deal with and limit the extent of any obligation, each loss, liability and reasonable cost incurred as a result of defending or settling a claim alleging such a liability).

5.2 If a Contract cannot be transferred to the Buyer except by an assignment made with a specified person's consent or by a novation agreement:

5.2.1 this Agreement does not constitute an assignment or an attempted assignment of the Contract if the assignment or attempted assignment would constitute a breach of the Contract;

5.2.2 both before and after Completion each party (in the case of the Seller and the Administrators, at the reasonable cost and expense of the Buyer) shall make all reasonable efforts to obtain the relevant person's consent to the assignment, or achieve the novation, of the Contract on terms satisfactory to the Seller, provided that the obligations of the Seller and/or the Administrators pursuant to this Clause 5.2.2 shall be limited to the period of 9 months from Completion; and

5.2.3 if the arrangements in Clause 5.2.2 cannot be made in respect of the Contract:

(a) each party shall make all reasonable efforts to ensure that the Contract is terminated without liability to either party;

(b) neither the Administrators, the Seller or the Buyer has any further obligation to the others relating to the Contract; and

(c) the Buyer shall not be entitled to any refund or allowance, the consideration hereunder shall be unaffected and no right to rescission or to avoid this Agreement shall in any way arise.

6. **DEBTS**

- 6.1 The Buyer agrees that it will co-operate with and provide all necessary and reasonable assistance to the Seller and the Administrators following Completion to ensure the orderly collection by the Seller and the Administrators of the Debts. For the avoidance of doubt nothing contained in Clause 6.1 shall oblige the Buyer to issue legal proceedings for recovery of any Debt.
- 6.2 For the purposes of this Clause 6, the value of all Debts collected by the Seller with the assistance of the Buyer (together the "Collected Debts") shall be calculated by first deducting from such Collected Debts any amount in respect of VAT paid to the Seller by the relevant debtor in respect thereof. The Buyer shall invoice the Seller quarterly in arrears for assisting the Seller with the collection of Debts in the following amounts:
- 6.2.1 no amount whatsoever will be payable in respect of Collected Debts with a value of up to and including £2,000,000;
- 6.2.2 a sum equal to 5% of the amount by which the value of Collected Debts exceeds £2,000,000 but is less than or equal to £3,000,000 (net of any amount paid to the Buyer in respect of an earlier quarter) up to a maximum aggregate payment pursuant to this Clause 6.2.2 of £50,000;
- 6.2.3 a sum equal to 10% of the amount by which the value of Collected Debts exceed £3,000,000 (net of any amount paid to the Buyer in respect of an earlier quarter).

For the avoidance of doubt, this arrangement will not, for any purpose, constitute (i) the Buyer as the agent of the Seller or (ii) the Buyer's employees as an employee of the Seller.

- 6.3 The Buyer shall account for any Debts which come into the possession of the Buyer either at or at any time after Completion, within five Business Days of receipt. Prior to such payment the Buyer shall hold such Debts separately from the Buyer's other monies in an account designated for such purpose and on trust for the Seller.
- 6.4 It is agreed and acknowledged (for the avoidance of any doubt):
- 6.4.1 any unallocated sums received by the Seller, the Administrators or the Buyer from any debtor shall first be appropriated against the Debts (and not against any sums owing to the Buyer for goods or services provided by the Buyer to the relevant debtor);
- 6.4.2 the Buyer shall not directly or indirectly encourage any debtor to make payments to the Buyer in preference or priority to payments to be made to the Seller in respect of the Debts; and
- 6.4.3 the Buyer shall not be obliged to pay to the Administrators any monies paid by debtors which are expressed to relate to invoices issued by the Buyer in the

period following Completion where such invoices have been assigned by the Buyer to HSBC Invoice Finance (UK) Limited .

7. RECORDS

7.1 To the extent that any Administration Records and/or Company Records are located at Completion, or from time to time thereafter, at the Property, the Buyer shall (for a period of 12 months from Completion) use its reasonable endeavours to ensure that such records are stored, preserved, safeguarded and maintained in the same state and condition as they are at Completion. If, in the period following this initial 12 months, the Buyer intends to dispose or otherwise destroy any such Administration Records and/or Company Records, the Buyer undertakes to give the Company and the Administrators at least 10 Business Days notice in writing.

7.2 The Buyer shall grant the Seller and the Administrators access, during normal business hours and on reasonable notice, to all Administration Records and/or Company Records which are located from time to time at the Property and which are under the Buyer's control, insofar as the Seller and/or the Administrators may need to inspect, copy or remove the records as they in their absolute discretion think fit.

7.3 The Buyer will also permit the Seller and the Administrators, or their authorised representatives, to inspect any books and records of the Buyer relevant to the transactions contemplated by this Agreement, whether such have been transferred to the Buyer pursuant to the terms of this Agreement or not, free of charge, (and take copies at their own expense) for the purpose of ascertaining what sums may be due to them from the Buyer under this Agreement, including by reason of the apportionments and adjustments to be made under Clause 11, or for any purpose in connection with the Seller's administration or subsequent liquidation.

7.4 To the extent that any such records are in the Seller's possession, the Seller shall make the Company Records available to the Buyer, for a period of 12 months from Completion, during normal business hours and on reasonable notice insofar as the Buyer may reasonably need to see, and if it wishes, copy them at its own expense for the purpose of its business. After that 12-month period, the Seller and/or the Administrators shall be entitled to remove or in any other way deal with any of the Company Records in such manner as they in their absolute discretion think fit.

7.5 The provisions of this clause shall take effect subject to the requirements of the VATA and the Insolvency Regulations 1994.

8. THIRD PARTY EQUIPMENT AND RETENTION OF TITLE ASSETS

8.1 For so long as the Third Party Equipment or the Retention of Title Assets remain the property of a third party, the Buyer shall not:

8.1.1 hold itself out as owner of the Third Party Equipment or the Retention of Title Assets;

- 8.1.2 permit any adverse claim, mortgage, charge, encumbrance or interest of any kind whatsoever to arise in relation to any Third Party Equipment or the Retention of Title Assets; or
- 8.1.3 purport to sell, charge or dispose of Third Party Equipment or the Retention of Title Assets.
- 8.2 The Buyer shall hold the Third Party Equipment and the Retention of Title Assets as bailee, keep them in its own possession, at its own expense in as good a repair and condition as they are at Completion (fair wear and tear excepted) and, at either their owners' request or at the discretion of the Administrators, shall allow the owners and/or the Administrators to collect them and to have access to them for that purpose. The Buyer shall (subject strictly to the foregoing) be entitled (but not obliged) to negotiate with the owners of the Third Party Equipment to reach an acceptable compromise with those owners, such that the Buyer is entitled to keep possession of the relevant equipment.
- 8.3 Notwithstanding Clauses 8.1 and 8.2, in the event that the Buyer, of necessity, choice or by inadvertence, uses, disposes of, destroys or consumes any Retention of Title Assets, Third Party Equipment or goods supplied under any analogous rights and/or any other Third Party Assets (other than those subject to Known ROT Claims and any Third Party Stock), the Buyer shall indemnify the Seller and the Administrators and each of them against all reasonable costs and expenses, losses and liabilities which they may attract or incur by virtue of such use or consumption by the Buyer.
- 8.4 If any item included within the Assets is discovered after Completion not to belong to the Seller then the Seller and/or the Administrators may withdraw it from the sale. In that event, in respect of such asset the Buyer shall not be entitled to any refund or allowance, the Total Purchase Price payable hereunder shall be unaffected and no right to rescission or to avoid this Agreement in any way shall arise.
- 8.5 The Seller confirms that at the date of Completion it has no actual knowledge of any retention of title or third party claims in relation to the Assets other than the Known ROT Claims.
9. VAT
- 9.1 All sums set out in this Agreement or otherwise payable by the Buyer to the Seller pursuant to this Agreement shall be deemed to be exclusive of any VAT which is chargeable on the supply or supplies for which such sums (or any part thereof) are the whole or part of the consideration for VAT purposes.
- 9.2 Where, pursuant to the terms of this Agreement, the Seller or the Administrators make a supply to the Buyer for VAT purposes and VAT is or becomes chargeable in respect of such supply, the Buyer shall upon receipt of a VAT invoice, pay to the Seller or the Administrators (as appropriate) (in addition to and at the same time as any other consideration for such supply) a sum equal to the amount of such VAT.

- 9.3 The Seller and the Buyer intend that article 5 of the Value Added Tax (Special Provisions) Order 1995 shall apply to the transfer of the Assets under this Agreement and agree to use all reasonable endeavours to secure that such transfer is treated under that article as neither a supply of goods nor a supply of services for VAT purposes.
- 9.4 The Buyer warrants and undertakes to the Seller and the Administrators that:
- 9.4.1 it will with effect from Completion become registered for VAT and it will on or before Completion supply the Seller with evidence reasonably satisfactory to the Seller that it has applied to become so registered and will immediately upon becoming so registered supply the Seller with a copy of its Certificate of Registration for VAT; and
- 9.4.2 it will after Completion use the Assets to carry on the same kind of business as that carried on by the Seller and the Administrators for VAT purposes.
- 9.5 The Seller and the Buyer intend that section 49 of VATA shall apply to the transfer of the Assets under this Agreement and the Seller or the Administrators may seek a direction pursuant to that section that the records referred to in that section shall be preserved by the Seller or the Administrators after Completion. If such direction is not sought or, if sought, has not been given, before Completion, then the Seller shall on Completion deliver to the Buyer all such records and, during the period for which such records are required to be preserved under paragraph 6 of Schedule 11 to the VATA, the Buyer shall preserve such records and afford to the Seller and the Administrators, on reasonable notice, access to such records for the purpose of inspecting and making copies of the same. If, following Completion, the Seller or the Administrators obtain a direction as mentioned, then the Buyer shall, forthwith after notification to such effect, return to the Seller or the Administrators (as the Buyer shall be directed by the Administrators) any such records as have been delivered to the Buyer under the previous provisions of this Clause 9.5.
- 9.6 The Buyer shall indemnify the Seller and the Administrators and each of them (on an after-tax basis) forthwith on written demand from and against any interest, penalty surcharge or other like sum payable or incurred by the Seller or the Administrators in respect of or arising from any failure by the Seller or the Administrators to account to H.M. Customs & Excise for any VAT chargeable in respect of the transfer of the Assets under this Agreement and from and against any other claim or demand made against, or expense incurred by, the Seller or the Administrators in connection with the same.
- 9.7 Where any party is required by the terms of this Agreement to reimburse or indemnify any other party for any cost or expense, such first party shall reimburse or indemnify such other party for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that such other party is entitled to credit or repayment in respect of such VAT from HM Customs & Excise.

10. **EMPLOYEES**

- 10.1 The parties declare that they each consider the transaction contemplated by this Agreement to constitute the transfer of an undertaking for the purposes of the Transfer of Undertakings (Protection of Employment) Regulations 1981 ("the **Transfer Regulations**") and accordingly the contracts of employment of the Employees will have effect from Completion as if originally made between the Employees and the Buyer, unless any such Employee objects to being transferred in accordance with Regulation 5 (4A) of the Transfer Regulations. To the extent that the Transfer Regulations do not apply in relation to the Employees, the Buyer agrees to take on the Employees as if the Transfer Regulations had so applied to them.
-
- 10.2 Without prejudice to Clause 10.7, the Buyer shall assume all liabilities and obligations transferred to it pursuant to the Transfer Regulations to or in respect of the Employees, (but not, for the avoidance of doubt, the Excluded Employees) including, without limitation, accrued holiday entitlements (whether as to actual holiday or to pay, or both) and bonus entitlements, and the Buyer shall indemnify the Seller, the Administrators and each of them and keep them fully indemnified in respect of these liabilities and obligations to such Employees.
- 10.3 The Buyer shall indemnify the Seller, the Administrators and each of them, and keep them fully indemnified at all times, against all statutory, contractual and common law liabilities to or in respect of or on behalf of any of the Employees, arising as a result of anything done or omitted to be done by the Buyer in relation to any of the Employees before, on or after Completion, and all reasonable costs, expense or damages incurred by the Seller, the Administrators and each of them in contesting claims in respect thereof.
- 10.4 The Buyer confirms that it has provided to the Seller in writing all such information as may be necessary to enable the Seller to comply with its obligation to inform and/or consult with the Employees and/or any other affected employees of the Seller and/or their representatives pursuant to Regulations 10 and 10A of the Transfer Regulations and the Buyer shall indemnify the Seller, the Administrators and each of them in respect of any awards, losses, damages, costs, liabilities and expenses (including legal fees) arising from the Buyer's failure to do so.
- 10.5 The Buyer shall indemnify the Seller, the Administrators and each of them in respect of any awards, losses, damages, costs and expenses (including legal fees) arising from the change of employer occurring by reason of the operation of the Transfer Regulations or any other change made by the Buyer to the Employees' terms and conditions of employment being a significant change and to the detriment of the Employees.
- 10.6 If any person whether or not an Employee makes a claim against either party in relation to an employment issue, the parties shall give to each other as soon as practicable after any such request all information which may be reasonably relevant to such claim and shall render to each other such assistance and co-operation as either shall reasonably require in contesting settling or dealing with any such claim.

10.7 Notwithstanding Clause 10.2, the Seller agrees to pay to the Buyer an amount equal to the salary payments and all accrued bonuses (including PAYE, employers National Insurance and pension scheme contributions) of the Employees in respect of the period prior to Completion, such amount to be determined by the Administrators (acting in good faith and in consultation with the Buyer) by reference to the books and records of the Seller and notified by the Administrators to the Buyer within 5 Business Days of Completion (the "Salary Payment"). The Salary Payment payable by the Seller pursuant to this Clause 10.7 shall be deducted from the Net Prepayment Amount payable by the Buyer pursuant to Clause 3.5. In the event that the Salary Payment exceeds the Net Prepayment Amount, the Deferred Consideration payable by the Seller on 14 April 2004 (and later payments, if appropriate) shall be reduced by an amount equal to the difference. For the avoidance of doubt, nothing in this Clause 10.7 shall be treated as limiting the obligations of the Buyer under the remainder of this Clause 10.

10.8 Subject to the Buyer complying with its obligations under 10.9 and 10.10 below, the Seller shall indemnify the Buyer and keep it fully indemnified at all times against all statutory, contractual and common law liabilities arising as a result of the employment or termination of the employment of Bonnie Dean by any of the Seller, the Buyer or Lister Petter Group Limited provided that, in the event of termination by the Buyer, such termination takes effect within 30 days of Completion. Notwithstanding that the Buyer and Seller agree that Bonnie Dean is an Excluded Employee, in the event that the contract of employment of Ms. Dean transfers to the Buyer, the Buyer will terminate the employment of Ms. Dean in accordance with the instructions of the Seller and in the manner which the Seller may so advise. The Buyer shall be entitled to set off against the Deferred Consideration then due from it under this Agreement, any and all amounts then due and payable by the Seller to the Buyer pursuant to this Clause 10.8.

10.9 If the Buyer becomes aware of any claim, potential claim, matter or event (a "Relevant Claim") which might lead to the Buyer making a claim against the Seller pursuant to the indemnity in Clause 10.8 above, then:-

10.9.1 the Seller shall procure that written notice thereof is given to the Buyer as soon as practically possible thereafter, such notice to contain all information as is then available to the Seller as will assist the Buyer in making a reasonable assessment of such relevant claim;

10.9.2 then, provided that the Seller seeks and takes into account the reasonable views of the Buyer in relation to the conduct of such relevant claim;

10.9.3 the Buyer shall not make any admission of liability, agreement or compromise without the prior written consent of the Seller;

10.9.4 the Buyer shall (at the Seller's expense) take such take such action as the Seller shall reasonably request to avoid, resist, dispute, appeal, compromise or defend any such claim or potential claim or any adjudication in respect

thereof, including the appointment of legal advisers nominated by the Seller to represent the Buyer in relation thereto.

10.10 Upon notification from the Buyer to the Seller of any Relevant Claim which might lead to a claim being made under Clause 10.8 above, the Buyer shall, subject to compliance with applicable laws, at the Seller's request, make available to the Seller during normal business hours and on reasonable notice, such records and information in the possession and control of the Buyer as are reasonably necessary for the purpose of conducting the relevant claim and to enable the Seller to examine such records and information and take copies thereof at the Seller's expense.

11. LIABILITIES AND APPORTIONMENTS

- 11.1 All liabilities and outgoings incurred in respect of the Assets up to Completion shall be borne by the Seller; all liabilities and outgoings in respect of the Assets for any period of time after Completion shall be borne by the Buyer. All periodical payments receivable in respect of the Assets up to Completion shall belong to and be payable to the Seller and for any period of time after Completion shall belong to and be payable to the Buyer.
- 11.2 Any part of any liabilities, outgoings or expenses which represents VAT shall be borne by the party for whom such VAT constitutes input tax for VAT purposes.
- 11.3 Any sum, or any part of any sum, in connection with the Assets which represents VAT, whether received by the Seller or the Buyer, whether before or after Completion, shall be retained by or paid to the party which is required to account to HM Customs & Excise for the VAT chargeable on the relevant supply or supplies.
- 11.4 Any amounts payable to give effect to this Clause 11 shall be paid within 10 Business Days of determination and the Administrators shall be responsible for distribution of the relevant amounts to the Seller.
- 11.5 If there is a dispute as to the amount payable under this Clause 11, then the Seller or the Buyer may on giving not less than 5 Business Days' notice to the other refer the determination of such dispute to an independent chartered accountant at a reputable firm of accountants nominated by the President of the Institute of Chartered Accountants. Such independent party shall act as an expert and not as an arbitrator and any decision made by him shall, in the absence of manifest error, be final and binding on the parties. The costs incurred in retaining such expert and obtaining such a decision shall be borne by the party whose calculation as to the amount due and payable is rejected (in whole or in substantial part) by the independent party or, if no such calculation is rejected or required, as the independent party may direct.
- 11.6 The apportionment of all outgoings and incomings in respect of the Priory Property is dealt with under the Priory Property Licence Agreement.

12. **EXCLUSIONS AND ACKNOWLEDGEMENTS**

- 12.1 The interest in the Assets which the Seller sells and the Buyer buys is such right, title and interest as the Seller may have on Completion, and references to the Assets shall mean such right, title and interest.
- 12.2 All representations, warranties and conditions, express or implied, and whether statutory or otherwise, are expressly excluded in relation to the sale of the Assets. Without limiting those general words of exclusion, there are excluded in particular warranties and conditions as to title, quiet possession, satisfactory and merchantable quality, fitness for any particular, or any, purpose and as to description, either in relation to the Assets or any asset the use of which by the Buyer may be permitted hereunder.
- 12.3 Neither the Seller nor the Administrators are liable to the Buyer (in equity, contract or tort, under the Misrepresentation Act 1967 or in any other way) for a representation that is not set out in this Agreement.
- 12.4 The Assets are sold in their state, condition and whereabouts as at Completion, and subject to all faults and to any lien, distraint, execution or detention, or claims of third parties over them or in respect of their use, the cost of discharging or compromising any or all of which shall be for the account of the Buyer.
- 12.5 The Buyer acknowledges and agrees that it has satisfied itself as to the state, condition and whereabouts of the Assets and as to their fitness for such purpose or purposes as the Buyer may intend to use them, and as to their correspondence with any description given or to be implied. It is accepted that no reliance has been placed in this regard on any conduct, statement, or silence, of the Seller or of the Administrators or of their employees, advisers, valuers, agents, partners or representatives in relation to any matter or circumstance and whether or not arising out of or under provisions of this Agreement, and the Administrators act only as agents of the Seller and have not given or entered into any collateral understandings, representations, warranties or Agreements as principals.
- 12.6 The Buyer accepts and undertakes that it shall not use any plant comprised in the Assets unless and until it is safe and, in all instances, in accordance with all statutory and regulatory requirements; nor shall the Buyer use any plant comprised in the Assets, or cause it to be used, without reference to all relevant manuals and records.
- 12.7 The Buyer accepts and agrees that it shall be its responsibility and its expense to apply for and obtain all necessary or appropriate licences, protection orders, legally or contractually required consents, permits and rights to use or have the benefit of the Assets and each of them and undertakes to indemnify the Seller and the Administrators and each of them against any claim by reason of the infringement of any third party's rights in the course of the sale and purchase hereby agreed, or in the course of use of the Assets by the Buyer in breach of any duty or requirement of whatever kind howsoever and whenever arising.

- 12.8 The Buyer acknowledges for the avoidance of any doubt that if it shall be found that the Seller does not have title or has an encumbered title to any or all of the Assets, this shall not be a ground for rescinding, avoiding or varying any or all of the provisions hereof or for the recovery of any or all of the purchase price paid by the Buyer hereunder.
- 12.9 Nothing in this Agreement shall require the Seller and/or the Administrators to discharge in whole or in part any liability of the Seller outstanding at or after the time of the Administrators' appointment or which would not otherwise be payable as a administration expense.
- 12.10 Any claim of the Buyer, or of any person claiming through it, against the assets of the Seller shall not take effect otherwise than as a claim by way of pro rata distribution among creditors of equal rank and shall not, for the avoidance of doubt, constitute a administration expense.
- 12.11 In any eventuality whatsoever, and without prejudice to each and every one of the provisions of this Agreement, any claim of the Buyer, or of any person claiming through under or in relation to the Buyer, shall not in any circumstances exceed the aggregate of the Completion Monies and that part of the Deferred Consideration which has actually been received (or in respect of which a right of set off has been exercised in accordance with Clause 10.8) by the Company in accordance with Clause 3 of this Agreement at the time of such claim.
- 12.12 Nothing in this Agreement shall operate to restrict or affect in any way any right of the Administrators to cease to act as Administrators of the Seller.
- 12.13 The exclusions of liability in this Clause 12 and 13 shall be in addition to, and not in substitution for and notwithstanding any right of indemnity or relief otherwise available to the Seller or the Administrators. They shall continue as well after as before Completion of this Agreement in whole or in part.
- 12.14 The exclusions of liability in this Clause 12 and Clause 13 shall arise and continue notwithstanding the termination of the Administrators' agency before or after the signing of this Agreement, and shall operate as waivers of any claims in tort and restitution as well as under the law of contract.
- 12.15 The Administrators have been joined as parties to this Agreement solely for the purpose of obtaining the benefit of the provisions of this Clause 12 and Clause 13 and any other provision in this Agreement in their favour. The Buyer agrees that the Administrators shall be entitled to enforce the provisions of this Agreement on the basis that the consideration given by them under this Agreement includes the fact that the Administrators are causing the Seller to enter into this Agreement.

13. **NO PERSONAL LIABILITY OF ADMINISTRATORS**

- 13.1 The Administrators, their firm, their partners and employees shall incur no personal liability under, or by virtue of, this Agreement, nor in relation to any related matter or

claim howsoever, whenever, and wherever arising, and whether such claim is formulated in contract and/or tort or by reference to any other remedy or right, and in whatever jurisdiction or forum. In particular the Administrators shall not be liable on any deed or document executed with a view, or for the purpose, of putting this Agreement into effect whether or not such deed or document so provides and the Administrators shall be entitled at any time to have any such deeds or documents amended to include an exclusion of personal liability in the terms of this Clause 13.

13.2 Pursuant to Section 14(5) of the Insolvency Act, the Administrators are agents of the Seller, and the Administrators shall incur no personal liability by reason of acting in that capacity.

13.3 Whether or not acting as agent of the Seller, the Administrators shall when acting in the name and on behalf of the Seller (in accordance with the powers conferred by Schedule 1 of the Insolvency Act), incur no personal liability by reason of acting in that capacity, nor shall any claim arise otherwise than against the Seller.

14. **BUYER'S WARRANTIES**

14.1 The Buyer confirms and warrants that it is resident in the United Kingdom for tax purposes.

14.2 The Buyer further confirms and warrants that it is entering into this Agreement as principal and as a bona fide purchaser of the Assets for its own account; that neither the Buyer nor any of the Buyer's directors are a director or shadow director of the Seller or any of the Seller's holding companies; and that neither the Buyer nor any of the Buyer's directors are connected with any such person.

14.3 The Buyer accepts that any risk in relation to competition or regulatory matters is entirely the Buyer's and that, in the event that any such matters become relevant, they will in no circumstances give rise to any ground for rescinding, avoiding or varying any or all of the provisions of this Agreement or for the recovery of any or all of the purchase price paid by the Buyer hereunder.

14.4 The Buyer confirms and warrants that in the period following Completion it shall, in respect of each Employee who at Completion was entitled to any employer pension contribution from the Seller, make regular monthly employer contributions equal in value to 5% or such higher sum as the Buyer in its absolute discretion may determine of each such Employee's basic salary (including for the avoidance of doubt, overtime payments or bonuses), into any personal pension scheme (being an exempt approved scheme within the meaning of Part IV of the Income and Corporation taxes Act 1988) reasonably nominated by each such Employee.

14.5 In addition to its obligations under Clause 14.4, the Buyer confirms and warrants that it shall make additional employer contributions into the pension arrangements referred to in Clause 14.4 for those Employees still engaged in the Business at the date of making such payments in an aggregate amount of £500,000 payable in five instalments of £100,000 commencing on 31 December 2004 and annually thereafter. Such additional

employer contributions will be allocated to the pension arrangements of Employees who were members of the Lister-Petter defined benefit pension scheme at Completion, and shall be apportioned between such Employees on a reasonable basis determined by the Buyer having regard to any actual or anticipated abatement to the benefits for each Employee in respect of the Lister-Petter defined benefit pension scheme.

14.6 For the avoidance of doubt, the Seller acknowledges that the Buyer has not and shall not participate in and shall have no obligation to make any contribution to the Lister Petter defined benefit pension scheme.

14.7 The Buyer undertakes that upon receipt of the written instructions of the Seller, the Buyer shall (at the reasonable cost and expense of the Seller and in accordance with the Seller's reasonable instructions) make delivery to JMG of the assets detailed in invoice number SIE/39051620 issued by the Company pursuant to the JMG Contract. Pending such delivery, the Buyer undertakes to hold such assets as bailee of the Seller, keep them in its own possession, at its own expense in as good a repair and condition as they are at Completion. For the avoidance of doubt, the Buyer acknowledges that the assets detailed in invoice number SIE/39051620 issued by the Company pursuant to the JMG Contract are specifically excluded from the sale of the Assets pursuant to this Agreement.

15. COSTS

15.1 Except where this Agreement provides otherwise, each party shall pay its own costs relating to the negotiation, preparation, execution and performance by it of this Agreement and of each document referred to in it.

15.2 The Buyer shall be liable for any stamp duty payable on, or in relation to, this Agreement and any document produced with a view to, or for the purpose of, carrying it into effect.

16. FURTHER ASSURANCE

16.1 Without prejudice to Clauses 5.2.2 and 16.3, provided a request for assistance is made within 3 months of Completion and provided no more than a minimal amount of time is involved on the part of the Administrators and their staff, the Seller will execute such further deeds and documents as may reasonably be necessary to vest the Assets, or any relevant part of them, in the Buyer subject to the terms of such documents being acceptable to the Seller.

16.2 The legal and other costs of the preparation and execution of such assurances will, however, be borne by the Buyer, including any proper and reasonable legal fees of the Administrators' advisers in dealing with them.

16.3 The Company shall (at the cost and expense of the Buyer) use reasonable efforts in the period of 6 months following Completion to assist the Buyer in procuring the registration in the name of or transfer to the Buyer of (i) any Intellectual Property Rights, (ii) any and all trade marks falling within the definition of Intellectual Property

Rights at relevant trade mark registries including, where appropriate, the signing of forms TM16 in respect of trade marks registered in the name of the Seller and (iii) any Domain Names falling within the definition of Intellectual Property Rights at relevant registries including, where appropriate, the signing of Nominet forms in respect of Domain Names registered in the name of the Seller.

- 16.4 The Buyer will generally account for any monies, assets, rights or interests which are not included within the sale of the Assets pursuant to the terms of this Agreement, but which come into the possession of the Buyer either at or at any time after Completion, within five Business Days of receipt. Prior to such payment, or to such accounting, any monies or assets in the Buyer's possession, which are required to be so paid or accounted for pursuant to the terms of this Clause 16.4, will be held by the Buyer on trust for the Seller.

17. GENERAL

- 17.1 A variation of this Agreement is valid only if it is in writing and signed by or on behalf of each party.
- 17.2 Except to the extent that they have been performed and except where this Agreement provides otherwise, the obligations contained in this Agreement remain in force after Completion.
- 17.3 A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this Agreement, but this does not affect any right or remedy of a third party which exists or is available apart from that Act.
- 17.4 None of the rights or obligations under this Agreement may be assigned or transferred by the Buyer. All and any rights of the Seller hereunder may be assigned or transferred at the Seller's discretion (such assignee or transferee referred to herein as "Seller Assignee").
- 17.5 It is agreed by the parties that the provisions of this Agreement, in particular those in Clauses 12 and 13, are fair and reasonable in the circumstances of the administration of the Seller and accord with normal practice on sales from a company in administration. This is the case in particular in the light of the fact that:
- 17.5.1 the Buyer has had the opportunity to inspect and investigate the Assets;
- 17.5.2 the Buyer is aware of the need to rely on that opportunity by reason of the absence of warranties;
- 17.5.3 the Seller is insolvent and faces the constraints necessarily imposed on it selling in those circumstances; and
- 17.5.4 the knowledge of the Business and of the Assets available to the Administrators and their partners, staff and advisers is necessarily limited.

- 17.6 Nothing in this Agreement shall operate to restrict or affect in any way right of the Administrators to be indemnified, or to exercise a lien, whether under Sections 19 or 234 of the Insolvency Act or otherwise.
- 17.7 Nothing in this Agreement shall have the effect of limiting or restricting any liability of any party arising as a result of any fraud on their part, or for death or injury arising out of that party's own negligence.
- 17.8 If any of these provisions is held not to be valid but would be valid if part of the wording were deleted or modified then that provision shall apply with such modification as may be necessary to make it enforceable.

17.9 All undertakings, indemnities and covenants in this Agreement on the part of two or more persons are made or given by such persons jointly and severally.

18. **ENTIRE AGREEMENT**

This Agreement and the Buyer Debenture and any documents contemplated herein or therein constitute the entire agreement, and supersede any previous agreement between the parties relating to the subject matter of this Agreement.

19. **ANNOUNCEMENTS**

- 19.1 The contents and terms of this Agreement shall be and remain confidential to the parties in the absence of agreement to the contrary by all parties, save that the Administrators shall be at liberty to disclose them to all creditors of the Seller, and to show appropriate figures in their administration records, accounts and returns, and for the purpose of enforcing its terms, or if required to do so by any court or tribunal of competent jurisdiction.
- 19.2 No party may, before or after Completion, make or send a public announcement, communication or circular concerning the transactions referred to in this Agreement unless it has first obtained the other parties' written consent which may not be unreasonably withheld or delayed.
- 19.3 Clause 19.2 does not apply to a public announcement, communication or circular:
- 19.3.1 made or sent by the parties after Completion to a customer, client or supplier of the Business informing it of the Buyer's purchase of the Business and the Assets; or
 - 19.3.2 required by law, by a governmental authority or other authority with relevant powers to which either party is subject or submits, whether or not the requirement has the force of law, provided that the public announcement, communication or circular shall so far as is practicable be made after consultation with the other party and after taking into account the reasonable requirements of the other party as to its timing, content and manner of making or despatch.

20. **NOTICES**

20.1 A notice under or in connection with this Agreement (a "Notice"):

20.1.1 shall be in writing;

20.1.2 shall be in the English language; and

20.1.3 shall be delivered personally or sent by first class post pre-paid recorded delivery (and air mail if overseas) to the party due to receive the Notice at its address set out in this Agreement, or to that party's solicitors' address as set out in this Agreement, or to another address specified by that party by not less than 7 days' written notice to the other party received before the Notice was despatched.

20.2 Unless there is evidence that it was received earlier, a Notice is deemed given:

20.2.1 if delivered personally, when left at the address referred to in clause 20.1.3;

20.2.2 if sent by post, except air mail, two business days after posting it;

20.2.3 if sent by airmail, six business days after posting it.

21. **GOVERNING LAW AND JURISDICTION**

21.1 This Agreement is governed by English law.

21.2 The courts of England and Wales have exclusive jurisdiction to settle any dispute arising from or connected with this Agreement (a "Dispute").

21.3 The parties agree that the courts of England and Wales are the most appropriate and convenient courts to settle any Dispute and, accordingly, that they will not argue to the contrary.

22. **COUNTERPARTS**

This Agreement may be executed in any number of counterparts, each of which when executed and delivered is an original and all of which together evidence the same Agreement.

EXECUTED by the parties on the day and year first above written.

SCHEDULE 6
TRADE MARKS

TRADE MARKS

15.12.03

```

*****
*
* CLIENT REPORT
*
* for
*
* Lister Petter UK Limited
*
*****

```

Search Parameters:

Client : Lister Petter UK Limited
 All types
 Status : 01 to 14
 Live Cases Only
 Archive not Included
 Advisory not Included

(LIS80)

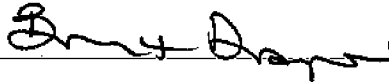
Att. Henry Foster,
Regards. D. Agnes

WITHERS & ROGERS
 CHARTERED PATENT ATTORNEYS
 GOLDINGS HOUSE, HAYS LANE
 LONDON SE1 2HW

SIGNED by **LISTER PETTER UK**)
LIMITED (in Administration))
acting by its joint administrator)
Lee Manning as agent and)
without personal liability)



SIGNED by *Bryan Daper*)
For and on behalf of **ETCHCO 1213**)
LIMITED)



SIGNED by Lee Manning in his capacity)
as joint administrator of the Company for)
himself and on behalf of Andrew John)
Pepper but without personal liability)
and solely for the purposes of taking the)
benefit of Clauses 12 and 13 of this Agreement)
and any other provision in the Agreement)
in their favour.)

